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**DEPARTMENT OF HOMELAND SECURITY**

[Docket No. DHS- 2015-0005]

RIN 1601-ZA15

Chemical Facility Anti-Terrorism Standards; Guidance for the Expedited Approval Program

**AGENCY:** National Protection and Programs Directorate, DHS.

**ACTION:** Notice of Availability.

**SUMMARY:** The Department of Homeland Security (DHS or Department), National Protection and Programs Directorate (NPPD), is issuing guidance to comply with the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (the Act). The Act amended the Homeland Security Act of 2002 to require DHS to issue guidance for an Expedited Approval Program that identifies specific security measures sufficient to meet risk-based performance standards established as part of the Chemical Facility Anti-Terrorism Standards (CFATS) regulations.

**DATES:** The Guidance for the Expedited Approval Program is effective on June 16, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice, the Expedited Approval Program, or the guidance document for the Expedited Approval Program, call or email David Wulf, Director, DHS/NPPD/IP/ISCD at [CFATS@hq.dhs.gov](mailto:CFATS@hq.dhs.gov) or via phone at 703-235-5263. Questions may also be directed to

Director Wulf by mail at 245 Murray Lane, S.W., Mail Stop 0610, Arlington, VA 20528-0610. Questions that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),<sup>1</sup> Sensitive Security Information (SSI),<sup>2</sup> or Protected Critical Infrastructure Information (PCII)<sup>3</sup> should be properly safeguarded.

#### **SUPPLEMENTARY INFORMATION:**

**Viewing Material.** The Expedited Approval Program guidance may be found as part of docket DHS-2015-0005 by going to <http://www.regulations.gov>, inserting DHS-2015-0005 in the “Keyword” box, and then clicking “Search.” The Expedited Approval Program guidance may also be found on [www.dhs.gov/chemicalsecurity](http://www.dhs.gov/chemicalsecurity).

#### **Authority and Background**

On December 18, 2014, the President signed into law the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (the Act) (Pub. L. 113-254). The Act amended the Homeland Security Act of 2002 (Pub. L. 107-296) to re-codify and reauthorize the CFATS program and add new provisions to the program while preserving most of the existing CFATS regulations.<sup>4</sup> DHS is issuing guidance to comply with section 2102(c)(4)(B) of the Homeland Security Act of 2002, which specifically requires the Secretary to issue guidance for an Expedited Approval Program that identifies

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<sup>1</sup> For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at [http://www.dhs.gov/xlibrary/assets/chemsec\\_cvi\\_proceduresmanual.pdf](http://www.dhs.gov/xlibrary/assets/chemsec_cvi_proceduresmanual.pdf).

<sup>2</sup> For more information about SSI see 49 CFR Part 1520 and the SSI Program webpage at <http://www.tsa.gov/stakeholders/sensitive-security-information-ssi>.

<sup>3</sup> For more information about PCII see 6 CFR Part 29 and the PCII Program webpage at <http://www.dhs.gov/protected-critical-infrastructure-information-pcii-program>.

<sup>4</sup> Section 2 of the Act added a new Title XXI to the Homeland Security Act of 2002. Title XXI contains new sections numbered 2101 through 2109. Citations to the Homeland Security Act of 2002 throughout this document reference those sections of Title XXI.

specific security measures that are sufficient to meet the risk based performance standards established as part of CFATS. Section 2102(c)(4)(B)(i) of the Homeland Security Act of 2002 requires the Secretary to issue this guidance within 180 days of the date of enactment of the Act (June 16, 2015).

### **Overview of the Guidance for the CFATS Expedited Approval Program**

Section 2102 of the Homeland Security Act of 2002, among other actions, modifies CFATS by adding a new process by which a high-risk chemical facility, currently assigned to (risk-based) Tier 3 or Tier 4 by DHS, can meet its regulatory requirement to draft and implement a Site Security Plan. Section 2102(c)(4) of the Homeland Security Act of 2002 labels this new process the “Expedited Approval Program.”

Participation in the Expedited Approval Program is optional for Tier 3 and Tier 4 chemical facilities. If a Tier 3 or Tier 4 chemical facility opts not to participate in the Expedited Approval Program, it must comply with the other CFATS requirements for submission of a Site Security Plan (or an Alternative Security Program) to DHS for review, and for implementation of the submitted plan. See generally 6 C.F.R. Part 27, Subpart B (describing requirements for submission and implementation of Site Security Plans and Alternative Security Programs outside of the Expedited Approval Program). Under the Expedited Approval Program, a Tier 3 or Tier 4 chemical facility may submit a Site Security Plan to DHS, which must either follow the prescriptive measures described in the guidance document announced by this Notice of Availability, or the Tier 3 or Tier 4 chemical facility must certify that any material deviations from the guidance meet the

risk-based performance standards contained in CFATS.<sup>5</sup> If a Tier 3 or Tier 4 chemical facility chooses to submit a Site Security Plan in accordance with the guidance, DHS can review the Site Security Plan for facial deficiency within 100 days after the date on which the Plan is received by DHS, as outlined in section 2102(c)(4)(G)(i) of the Homeland Security Act of 2002. DHS will subsequently monitor facilities' compliance with their Site Security Plans in accordance with this guidance through inspections and audits conducted under CFATS.

### **Exemption From Administrative Procedure Act Requirements**

Section 2102(c)(4)(B)(iii)(I) of the Homeland Security Act of 2002 provides that the Secretary is exempt from the requirements of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, if the Secretary issues the guidance on or before June 16, 2015. Accordingly, DHS is issuing this guidance without regard to section 553 of the Administrative Procedure Act.

### **Exemption From The Paperwork Reduction Act**

Section 2102(c)(4)(B)(iii)(II) of the Homeland Security Act of 2002 provides that the Secretary is exempt from the requirements of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, Subchapter I, if the Secretary issues the guidance on or before June 16, 2015. Accordingly, DHS is issuing guidance without regard to the requirements of the Paperwork Reduction Act.

### **Issuance Of Agency Guidance For The Expedited Approval Program**

Section 2102(c)(4)(B)(i) of the Homeland Security Act of 2002 directs the

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<sup>5</sup> The CFATS risk-based performance standards are described at 6 CFR § 27.230.

Department to issue prescriptive guidance for chemical facilities that choose to submit Site Security Plans as part of an Expedited Approval Program that “identifies specific security measures that are sufficient to meet the risk-based performance standards.” The Expedited Approval Program guidance may be found on [www.dhs.gov/chemicalsecurity](http://www.dhs.gov/chemicalsecurity) and is also available in the docket.

This notice is issued under authority of 5 U.S.C. 552(a) and section 2102(c)(4) of the Homeland Security Act of 2002 (6 U.S.C. 622(c)(4)).

Suzanne Spaulding,  
Under Secretary, National Protection and Programs Directorate, Department of  
Homeland Security.  
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